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 WHITTAKER CORPORATION

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

SANTA CLARITA VALLEY WATER  
 AGENCY,

Plaintiff,

vs.

WHITTAKER CORPORATION and  
 DOES 1-10, Inclusive,

Defendant.

AND RELATED CASES

Case No: 2:18-cv-6825 SB (RAOx)

*Assigned to Hon. Stanley Blumenfeld, Jr.*

**DEFENDANT WHITTAKER  
 CORPORATION'S RESPONSE TO  
 PLAINTIFF'S OFFER OF PROOF  
 REGARDING OPINIONS OF  
 EXPERT RICHARD HUGHTO AND  
 DECLARATION OF FRED M.  
 BLUM**

Complaint Filed: August 8, 2018  
 Trial Date: August 24, 2021

**DEFENDANT'S INTRODUCTION**

Defendant Whitaker Corporation received Plaintiff SANTA CLARITA VALLEY WATER AGENCY ("SCVWA") Offer of proof prior to the three hour meet and confer meeting on Monday, August 16, 2021. At the meeting, Whittaker informed SCVWA that it objected to the Offer since it was longer than the 10 pages allowed by the Court and was not double spaced as required in the Court Rules.

SCVWA appears to have attempted to resolve the first problem by transferring the uncontested opinions to a declaration. The problem of the lack of double spacing still persists. When Defendant changed the pleading to the proper spacing the document was then 26 pages without the accompanying declaration.

At the meet and confer the Parties discussed the method of filing Whittaker's response. Whittaker suggested the process that is contained below in a joint offer. SCVWA objected and informed Whittaker that they should file a separate response. This is the response. The first three columns are identical to what SCVWA filed; except the spacing has been changed to comply with the rules. Whittaker's response is contained in the fourth column.

**PLAINTIFF'S INTRODUCTION**

Pursuant to the Court's August 13, 2021 Order (Dkt. 335), Plaintiff respectfully submits this Offer of Proof in further Opposition to Defendant's Motion in Limine No. 7 to Preclude Certain Opinions of Expert Richard Hughto Under Daubert (Dkt. 309). Plaintiff identifies the purpose for which it seeks to admit each of Dr. Hughto's opinions and the basis for each, but notes that the opinions and bases are identified more fully in the Rule 26 Reports and deposition of Dr. Hughto in this matter. Rule 26 does not require that an expert Report be limited to 10 pages. Further meet-and-confer confirms that Whittaker's Motion in Limine No. 7 is limited to 7 specific opinions, although Plaintiff intends to fully address the Court's concerns as to admissibility of Dr. Hughto's work and

opinions. Importantly, Whittaker's suggestion that there is only evidence of VOC and perchlorate contamination at two locations is incorrect (their expert ignored all data from CDM Smith); due to Whittaker's self-described "indiscriminate dumping", these contaminants are found spread across the Site.<sup>1</sup>

Key Opinion	Purpose/Relevance	Basis	Whittaker's Response
1. Whittaker conducted waste handling practices not condoned by the State of California prior to the implementation of the RCRA regulations in 1980. (Blum Decl. [Dkt. 324], Ex. 1 at p. 32.)	Supports allegation that perchlorate and VOC contamination are found throughout the site, and no area can be excluded as a location for disposal of perchlorate and VOC waste due to Whittaker's indiscriminate dumping and failure to identify and document its disposed chemicals and/or the locations of its own landfills. Whittaker's failure	Dr. Hughto's report lists the evidence supporting this opinion, including a 12/22/77 Whittaker government inspection summary that identified waste handling practices not condoned by the State (Blum Decl. [Dkt. 324], Ex. 1 at p. 23.) Data collected	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2) which restricts admission of other wrongs or acts to "purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." The need to remediate the Site at multiple locations does not supply support an exception

<sup>1</sup> See Dr. Hughto's Figure 6 (Blum Decl. [Dkt. 324], Ex. 2 at p. 22), attached hereto as Exhibit A for the Court's convenience.

1		to follow standard	resulted in	under FRE
2		documentation	remediation of	404(b)(2). <i>Sparks v.</i>
3		practices, and its	soil being	<i>Gilley Trucking Co.,</i>
4		poor housekeeping	conducted in	<i>Inc.</i> , 992 F.2d 50, 52
5		practices for the	over 50 areas of	(4 <sup>th</sup> Cir. 1993). Nor
6		storage and disposal	the site	does it comply with
7		of solvents and	employing	the Court's Order to
8		other chemicals, is	multiple	provide specific
9		proper expert	remedial	citations to the
10		testimony that will	technologies,	record, since it only
11		assist the trier of	demonstrating	refers the reader
12		fact to understand	that there were	back to Dr. Hughto's
13		the heavy	at least 50 areas	report. Nor is there
14		contamination at	of	any specificity as to
15		"burn pits" and the	contamination	what pre-RCRA
16		"Hula Bowl" dump	releases. ( <i>Id.</i> at	laws were violated
17		sites (relevant to	pp. 7-8.) Dr.	or any proof that the
18		CERCLA plausible	Hughto also	VOC's found were
19		pathways), and to	gave a detailed	from Whittaker
20		establish	deposition as to	rather than the
21		negligence. More	the basis of this	numerous other
22		broadly, this type of	and his other	occupants for the
23		evidence is directly	work and	Site.
24		relevant to rebut	opinions in this	
25		Whittaker's story	matter.	Last, while the offer
26		that the discharge		states that it is
27		of solvents occurred		relevant to show that
28		primarily at one		there was
		location at a		widespread release

1		discrete point in		of solvents, the
2		time pursuant to		opinion is not
3		accepted practices.		restricted to
4				solvents, nor does it
5		Also supports		show how the
6		punitive damages		material was placed
7		claim, as Whittaker		there.
8		acted with willful		
9		and conscious		
10		disregard of safety.		
11	2. Whittaker did	Supports allegation	Dr. Hughto	The Offer does not
12	not follow its	that perchlorate and	describes the	establish
13	stated guidelines	VOC contamination	basis for this	admissibility under
14	precluding	are found	opinion in his	FRE 401, 403 or
15	dumping of	throughout the site,	report (Blum	404(b)(2). <i>Sparks</i> ,
16	waste to the	and no area can be	Decl. [Dkt.	992 F.2d at 52. That
17	ground. (Blum	excluded as a	324], Ex. 1 at	there was alleged
18	Decl. [Dkt. 324],	location for	pp. 24-25).	improper “dumping”
19	Ex. 1 at p. 32.)	disposal of	Therein, Dr.	of scrap in the Hula
20		perchlorate/VOC	Hughto cites,	Bowl is not relevant
21		waste due to	among other	since there is no
22		Whittaker’s	things, a 1/12/82	offer that the
23		indiscriminate	Bermite memo	placement of scrap
24		dumping and failure	authored by	was illegal. The
25		to identify and	Zoyd R. Luce	only reference to
26		document its	indicating that	VOCs is that there
27		disposed chemicals	Bermite became	are “documented
28		and/or the location	aware that its	elevated VOCs in

1		of its own landfills.	practice of	the Hula Bowl . . .
2			dumping scrap	.” There is no offer
3		Also supports	at the Hula	that the VOC’s
4		punitive damages	Bowl was no	found were from
5		claim, as Whittaker	longer	Whittaker rather
6		acted with willful	permissible	than the numerous
7		and conscious	under California	other occupants for
8		disregard of safety.	law and should	the Site, nor how the
9			be discontinued	VOCs were placed
10			immediately.	there or at the time
11			( <i>Id.</i> at p. 24).	they were placed in
12			He further cites	the Hula Bowl that
13			a Whittaker	the practice was
14			8/26/82 memo	improper.
15			authored by	
16			John J. Peloquin	
17			regarding the	
18			Hula Bowl	
19			“disaster area”	
20			that stated, “The	
21			present	
22			condition of the	
23			Hula Bowl	
24			would very	
25			likely trigger	
26			ground water	
27			monitoring.”	
28			( <i>Id.</i> at p. 25.)	
			He further cites	

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a Bermite  
9/7/82 memo  
authored by  
Zoyd R. Luce  
noting that  
progress at the  
Hula Bowl was  
slow in what  
was called a  
critical area.  
(*Id.* at p. 25.)  
Additionally,  
Whittaker's  
consultant  
Acton  
Mickelson  
documented  
elevated VOCs  
in the Hula  
Bowl on  
2/16/96 (*id.* at p.  
31). The Hula  
Bowl was also  
used to detonate  
waste munitions  
and explosives  
found at the site  
(as documented  
by GSI on

		2/14/2020) ( <i>id.</i> at p. 8). Waste material was ultimately excavated from the Hula Bowl area, as documented by Wenck Associates on 6/19/87. ( <i>Id.</i> at p. 5.)	
7. Whittaker's process for management of compliance with environmental regulations at the Site led to it and the governing regulatory agencies identifying numerous violations of several different sets of governing regulations and laws. (Blum	Supports punitive damages claim, as Whittaker acted with willful and conscious disregard of safety.  Also supports allegation that perchlorate and VOC contamination are found throughout the site, and no area can be excluded as a location for	Dr. Hughto describes the basis for this opinion in his report (Blum Decl. [Dkt. 324], Ex. 1 at pp. 16-32). Dr. Hughto cites extensive evidence, including deposition testimony from Whittaker's witnesses Jim Jisa and Zoyd	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2). <i>Sparks</i> , 992 F.2d at 52. Nor does it comply with the Court's Order to provide specific citations to the record, since it only refers the reader back to Dr. Hughto's report. Citations in the Report are to depositions without



Decl. [Dkt. 324], Ex. 1 at p. 32.)	disposal of perchlorate/VOC waste due to Whittaker's indiscriminate dumping and failure to identify and document its disposed chemicals and/or the location of its own landfills.	Luce ( <i>id.</i> at p. 16), testimony from DTSC witness Alan Sorsher ( <i>id.</i> at pp. 21, 27) and documentary evidence including correspondence, company memoranda, site investigation reports and notices from regulatory agencies ( <i>id.</i> at pp. 18-32).	any reference to a specific location. Nor is there any specificity as to what violations regulators believed occurred since the only mention of such a belief pertains to an opinion of Mr. Sorsher that he former after he left DTSC.  Last, there is not showing what the alleged violations are or how they relate to VOCs or perchlorate.
8. Whittaker's methods of operation at the facility resulted in it and governing regulatory	Supports allegation that perchlorate and VOC contamination are found throughout the site, and no area can be excluded as a	Dr. Hughto describes the basis for this opinion in his report in multiple locations (Blum	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2). <i>Sparks</i> , 992 F.2d at 52. SCVWA lists multiple areas for

1	agencies	location for	Decl. [Dkt.	the Offer, but fails to
2	identifying	disposal of	324], Ex. 1 at	tie them to an
3	violations of	perchlorate/VOC	pp. 18-30).	allegation in the
4	RCRA	waste due to	Therein, Dr.	complaint or to the
5	regulatory	Whittaker's	Hughto cites as	disposal of
6	requirements	indiscriminate	supporting	VOC/perchlorate.
7	after 1980. The	dumping and failure	evidence,	The cite for the
8	violations	to identify and	among other	assertion that the
9	included, among	document its	things, a 5/29/79	evidence shows
10	others:	disposed chemicals	letter from John	"poor housekeeping
11	• Placing waste	and/or the location	J. Peloquin at	practices for the
12	materials on the	of its own landfills.	Whittaker	storage and disposal
13	ground during	Whittaker's failure	summarizing	of solvents and other
14	Hog-Out	to follow standard	conditions and	chemicals . . ." do
15	operations	documentation	practices	not refer to VOCs.
16	• Placing waste	practices, and its	observed during	SCVWA does not
17	materials on the	poor housekeeping	a site inspection,	explain how a 1979
18	ground in as	practices for the	wherein	letter is relevant to a
19	many as 28	storage and disposal	indiscriminate	claim of what
20	other areas	of solvents and	waste dumping	occurred after 1980.
21	• Failure to	other chemicals, is	to the	The argument that
22	comply with	proper expert	environment	evidence shows that
23	Closure Plan	testimony that will	was cited in	"directly relevant as
24	preparation and	assist the trier of	three areas.	the propellant
25	implementation	fact to understand	( <i>Id.</i> , at p. 23.)	removed during the
26	requirements	the heavy	He further cites	Hog-Out operation
27	• Failure to	contamination at	a 9/30/80	contained
28	adequately	"burn pits" and the	Bermite memo	ammonium
		"Hula Bowl" dump	authored by	perchlorate and

1	close the 317	sites (relevant to	Zoyd R. Luce in	became a source of
2	and 342 Area	CERCLA plausible	which it	groundwater
3	impoundments	pathways), and to	discussed the	contamination with
4	• Failure to	establish	Hog-Out	perchlorate and
5	conduct	negligence. More	operations and	chlorinated solvents.
6	required soil	broadly, this type of	noted that, “The	SCVWA cites only
7	and	evidence is directly	Hog-Out area is	to the report of Dr.
8	groundwater	relevant to rebut	currently	Hughto. Whittaker
9	monitoring at	Whittaker’s story	contaminated	can find no basis to
10	the time of the	that the discharge	and does not	conclude the
11	closure of the	of solvents occurred	meet the	solvents were also
12	impoundments	primarily at one	requirements of	released.
13	• Failure to	location at a	the Resource	
14	comply with	discrete point in	Contamination	In the end, SCVWA
15	the	time pursuant to	and Recovery	cites to several
16	groundwater	accepted practices.	Act”, which is	documents, but
17	monitoring		directly relevant	mostly to the Report
18	requirements	Also supports	as the propellant	of Dr. Hughto. The
19	• Failure to	punitive damages	removed during	citations to the
20	submit Closure	claim, as Whittaker	the Hog-Out	documents and many
21	Plan for the	acted with willful	operation	lack any specify as
22	closure of	and conscious	contained	to where in the
23	surface	disregard of safety.	ammonium	document the
24	impoundments		perchlorate and	material is located.
25	at Buildings		became a source	
26	317 and 342 in		of groundwater	Nor is there any tie
27	advance of		contamination	between the specific
28	closing those		with perchlorate	listed wrongs the
			and chlorinated	alleged opinions or

1	impoundments		solvents. ( <i>Id.</i> , at	any showing of how
2	• Inadequate soil		23-24.) Dr.	they are relevant to a
3	sampling		Hughto further	prove proving
4	during closure		cites a 10/9/80	motive, opportunity,
5	• Inadequate		Bermite memo	intent, preparation,
6	characterization		authored by	plan, knowledge,
7	of		Zoyd R. Luce in	identity, absence of
8	contamination		which it listed	mistake, or lack of
9	• Failure to		then-current	accident.”
10	report waste		violations of	
11	burial areas that		RCRA	
12	would have		prohibitions	
13	required		against dumping	
14	investigation		waste materials	
15	under RCRA		on the ground,	
16	• Submission of		affecting 29	
17	deficient Waste		different areas	
18	Analysis Plans		and including	
19	• Submission of		PCE, propellant,	
20	deficient		and perchlorate	
21	Closure Plans		wastes. ( <i>Id.</i> , at	
22	• Submitting		p. 24.)	
23	incomplete and			
24	inaccurate		Dr, Hughto’s	
25	Closure		report also	
26	Certification		details the	
27	Report		factual bases for	
28	• Conducted a		his opinions	

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Hydrogeologic Assessment without an approved Closure Plan		concerning Whittaker's regulatory failures in its closure of the site in his report. (Blum Decl. [Dkt. 324], Ex. 1 at pp. 18-30). Dr. Hughto cites, among other things, Whittaker's 5/26/81 Closure and Post-Closure Plan for the facility at issue, as well as Bermite's 9/9/83 Closure Plan, Whittaker's 3/1/85 Closure Plan, and Whittaker's 8/1/86 amended Closure Plan. ( <i>Id.</i> at p. 18.)	
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		<p>He further cites the evidence showing that these closure plans were inadequate and/or in violation of legal requirements, including inadequacies documented by the California DOHS on 4/28/66, by the USEPA on 6/4/86, and by the USEPA on 3/3/87. (<i>Id.</i> at pp. 19-20.) Dr. Hughto also cites a 6/22/87 memo delivered to the DTSC that described landfills at the facility that had not been</p>	
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		<p>adequately investigated nor removed, and thus would have served as a source of soil and groundwater contamination over an extensive area at the site, and the related correspondence between Whittaker's attorneys and environmental consultants and environmental regulators between 7/20/87 and 11/29/95. (<i>Id.</i> at p. 20.) Dr. Hughto further relies upon cited deposition testimony from</p>	
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		<p>former Whittaker employee Bradley Peach and DOHS official Alan Sorsher regarding the buried waste at the site. (<i>Id.</i> at pp. 20-21.) Additionally, Dr. Hughto relied on the 3/12/03 correspondence from the DTSC rescinding the May 1993 closure certification for an impoundment at the site, citing the need to follow the hazardous waste regulations. (<i>Id.</i> at p. 22.) The</p>	
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		waste management practices employed by Whittaker resulted in the need to conduct soil remediation at over 50 locations at the site. ( <i>Id.</i> at pp. 7-8.)	
9. Whittaker dumped scrap material in the Hula Bowl. Whittaker's waste disposal practices at the Hula Bowl were deficient. (Blum Decl. [Dkt. 324], Ex. 1 at p. 33.)	Supports allegation that perchlorate and VOC contamination are found throughout the site, and no area can be excluded as a location for disposal of perchlorate/VOC waste due to Whittaker's indiscriminate dumping and failure to identify and document its	Dr. Hughto describes the basis for this opinion in his report (Blum Decl. [Dkt. 324], Ex. 1 at pp. 24-25). Therein, Dr. Hughto cites, among other things, a 1/12/82 Bermite memo authored by Zoyd R. Luce indicating that Bermite became	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2). <i>Sparks</i> , 992 F.2d at 52. The opinion refers to the placement of scrap material in the Hula Bowl. There is no offer that the scrap was a hazardous waste or how it is connected to the disposal of VOCs or perchlorate.

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	disposed chemicals and/or the location of its own landfills. Whittaker’s failure to follow standard documentation practices, and its poor housekeeping practices for the storage and disposal of solvents and other chemicals, is proper expert testimony that will assist the trier of fact to understand the heavy contamination at “burn pits” and the “Hula Bowl” dump sites (relevant to CERCLA plausible pathways), and to establish negligence. More broadly, this type of evidence is directly relevant to rebut Whittaker’s story	aware that its practice of dumping scrap at the Hula Bowl was no longer permissible under California law and should be discontinued immediately. ( <i>Id.</i> at p. 24). He further cites a Whittaker 8/26/82 memo authored by John J. Peloquin regarding the Hula Bowl “disaster area” that stated, “The present condition of the Hula Bowl would very likely trigger ground water monitoring.” ( <i>Id.</i> at p. 25.)	
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	<p>that the discharge of solvents occurred primarily at one location at a discrete point in time pursuant to accepted practices.</p> <p>Also supports punitive damages claim.</p>	<p>He further cites a Bermite 9/7/82 memo authored by Zoyd R. Luce noting that progress at the Hula Bowl was slow in what was called a critical area. (<i>Id.</i> at p. 25.) Additionally, Whittaker's consultant Acton Mickelson documented elevated VOCs in the Hula Bowl on 2/16/96 (<i>id.</i> at p. 31. The Hula Bowl was also used to detonate waste munitions and explosives found at the site (as documented</p>	
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		by GSI on 2/14/2020) ( <i>id.</i> at p. 8). Waste material was ultimately excavated from the Hula Bowl area, as documented by Wenck Associates on 6/19/87. ( <i>Id.</i> at p. 5.)	
10. Soil sampling, analysis, and remediation were deficient pursuant to State regulations. (Blum Decl. [Dkt. 324], Ex. 1 at p. 33.)	Supports allegation that perchlorate and VOC contamination are found throughout the site, and no area can be excluded as a location for disposal of perchlorate/VOC waste due to Whittaker's indiscriminate dumping and failure to identify and	Dr. Hughto describes the basis for this opinion in his report (Blum Decl. [Dkt. 324], Ex. 1 at pp. 18-32). Dr. Hughto cites extensive evidence, including testimony from DTSC witness Alan Sorsher ( <i>id.</i> at pp. 21,	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2). <i>Sparks</i> , 992 F.2d at 52. The offer is entirely general and there is no basis to connect it to sampling for VOC's or perchlorate. The supporting citations are to 14 pages of Dr. Hughto's report and a conclusionary

1		document its	27) and	statements attributed
2		disposed chemicals	documentary	to Alan Sorsher on
3		and/or the location	evidence	two pages of the
4		of its own landfills.	including	Report.
5			correspondence,	
6		Also supports	company	
7		punitive damages	memoranda, site	
8		claim.	investigation	
9			reports and	
10			notices from	
11			regulatory	
12			agencies	
13			confirming the	
14			deficiency of	
15			soil sampling,	
16			analysis and	
17			remediation ( <i>id.</i>	
18			at pp. 18-32).	
19	12. Whittaker	Supports allegation	Dr. Hughto's	The Offer does not
20	buried wastes at	that perchlorate and	report describes	establish
21	multiple	VOC contamination	the results of the	admissibility under
22	locations across	are found	practice of	FRE 401, 403 or
23	the Site. This	throughout the site,	dumping and	404(b)(2).
24	included a	and no area can be	disposing of	<i>Sparks</i> , 992 F.2d at
25	practice	excluded as a	waste materials	52. The opinion is
26	Whittaker itself	location for	at numerous	general in nature but
27	referred to as	disposal of	locations across	the supporting
28	"indiscriminant	perchlorate/VOC	the site. Those	evidence shows that
	waste dumping".		locations	it does not refer to

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(Blum Decl. [Dkt. 324], Ex. 1 at p. 33.)	<p>waste due to Whittaker's indiscriminate dumping and failure to identify and document its disposed chemicals and/or the locations of its own landfills.</p> <p>Also supports punitive damages claim.</p>	<p>included the Hula Bowls, East Fork, and The Point as documented by IT, 5/10/90 and Acton Mickelson, 1/1997. (Blum Decl. [Dkt. 324], Ex. 1 at p. 4.) The materials buried included bad batches of munitions per Kanowsky, 11/11/96. (<i>Id.</i> at p. 4.) During the planning of remediation for the site, including the buried materials, it was decided to manage buried munitions and explosives, as</p>	<p>perchlorate nor VOCs. Rather munitions and explosives are the subject. There is no offer that would show that the munitions/explosives were illegally disposed of or how that disposal connects with VOCs or perchlorate.</p>
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		documented by GSI, 12/14/18. ( <i>Id.</i> at p. 7.) Dr. Hughto will report on Whittaker's 5/26/81 Closure and Post-Closure Plan, which, among other provisions, called for all employees leaving Bermite to be asked for information on buried or hidden material that would warrant decontamination treatment. ( <i>Id.</i> at p. 18.)	
13. Whittaker engaged in the deceptive practice of not notifying regulatory	Supports allegation that perchlorate and VOC contamination are found throughout the site,	Dr. Hughto describes the basis for this opinion in his report (Blum	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2).

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<p>authorities of some of the waste dumping and burial areas it identified prior to investigation and removal. (Blum Decl. [Dkt. 324], Ex. 1 at p. 33.)</p>	<p>and no area can be excluded as a location for disposal of perchlorate/VOC waste due to Whittaker's indiscriminate dumping and failure to identify and document its disposed chemicals and/or the location of its own landfills.</p> <p>Also supports punitive damages claim.</p>	<p>Decl. [Dkt. 324], Ex. 1 at pp. 16-17, 20-23). Dr. Hughto cites extensive evidence, including deposition testimony from Whittaker's witnesses Jim Jisa and Zoyd Luce (<i>id.</i> at p. 16), a 11/29/95 memo from DTSC indicating that Whittaker's environmental consultant had conducted investigation and remediation of hazardous waste disposal areas not disclosed to the State or DTSC</p>	<p><i>Sparks</i>, 992 F.2d at 52. The stated purposes of the alleged deceptive practices are not related to permitted uses of the evidence. The gravamen of the allegation is that Whittaker remediated areas of the Site without first notifying regulators. Even if true, SCVWA makes no offer that the failure to first notify the regulators had any ill effects. The opinion admits that Whittaker did conduct an investigation and remediation. The opinion of a single DTSC employee that the failure was "intentional" does</p>
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		( <i>id.</i> at p. 20), testimony from DTSC witness Alan Sorsher in which he confirmed that Whittaker “intentionally failed to disclose” information regarding its waste disposal practices at the Site ( <i>id.</i> at pp. 21) and other documentary evidence including correspondence, company memoranda, site investigation reports and notices from regulatory agencies ( <i>id.</i> at pp. 16-17, 20-	not change anything. It is his opinion and subject to exclusion on the same basis that the Court granted MIL 4 (Regulatory Opinions Regarding Violations).
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		23).	
14. Whittaker's practice of not reporting land waste disposal areas to the State and not investigating the impacts of those areas was delinquent and led to additional migration of contamination to and within the groundwater. (Blum Decl. [Dkt. 324], Ex. 1 at p. 33.)	Supports allegation that perchlorate and VOC contamination are found throughout the site, and no area can be excluded as a location for disposal of perchlorate/VOC waste due to Whittaker's indiscriminate dumping and failure to identify and document its disposed chemicals and/or the location of its own landfills.  Also supports punitive damages claim.	Dr. Hughto describes the basis for this opinion in his report (Blum Decl. [Dkt. 324], Ex. 1 at pp. 16-17, 20-23.) Dr. Hughto cites extensive evidence, including deposition testimony from Whittaker's witnesses Jim Jisa and Zoyd Luce ( <i>id.</i> at p. 16), a 11/29/95 memo from DTSC indicating that Whittaker's environmental consultant had conducted investigation	The Offer does not establish admissibility under FRE 401, 403 or 404(b)(2). <i>Sparks</i> , 992 F.2d at 52. It also is in direct contradiction to the previous opinion where Dr. Hughto is to opine that "Whittaker engaged in the deceptive practice of not notifying regulatory authorities of some of the waste dumping and burial areas it identified prior to investigation and removal. " SCVWA cites to a "a 11/29/95 memo from DTSC indicating that Whittaker's

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		and remediation of hazardous waste disposal areas not disclosed to the State or DTSC ( <i>id.</i> at p. 20), testimony from DTSC witness Alan Sorsher in which he confirmed that Whittaker “intentionally failed to disclose” information regarding its waste disposal practices at the Site ( <i>id.</i> at pp. 21) and other documentary evidence including correspondence, company memoranda, site	environmental consultant had conducted investigation and remediation of hazardous waste disposal areas not disclosed to the State or DTSC . . . .” That does not support the opinion that no investigation or removal was done.  Nor is there any offer that these areas contained VOCs or perchlorate.
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		investigation reports and notices from regulatory agencies ( <i>id.</i> at pp. 16-17, 20-23).	
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Date: August 18, 2021

BASSI, EDLIN, HUIE & BLUM LLP

By: /s/Fred Blum

FRED BLUM

Attorneys for Defendant

AND COUNTER-CLAIMANT

WHITTAKER CORPORATION

**DECLARATION OF FRED M. BLUM**

I, Fred M. Blum, declare that:

1. I am an attorney and partner at the law firm of Bassi, Edlin, Huie & Blum, counsel of record for Defendant Whittaker Corporation in the above-captioned action. I am a member in good standing of the State Bar of California and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this Declaration, and, if called as a witness, could and would testify competently to such facts under oath.

2. This Declaration is made pursuant to the Court's August 13, 2021 Order (Dkt. 335) regarding the parties' efforts to meet and confer regarding Plaintiff's Offer of Proof in support of its Opposition to Whittaker's Motion in Limine No. 7 to exclude certain opinions of expert Dr. Richard Hughto (Dkt. 309).

3. Whitaker received Plaintiff SCVWA Offer of proof prior to the three hour meet and confer meeting on Monday, August 16, 2021. At the meeting, Whittaker informed SCVWA that it objected to the Offer since it was longer than the 10 pages allowed by the Court and was not double spaced as required in the Court Rules.

4. SCVWA appears to have attempted to resolve the first problem by transferring the uncontested opinions to a declaration. The problem of the lack of double spacing still persists. When Defendant changed the pleading to the proper spacing the document was then 26 pages without the accompanying declaration.

5. At the meet and confer the Parties discussed the method of filing Whittaker's response. Whittaker suggested the process that is contained below in a joint offer. SCVWA objected and informed Whittaker that they should file a separate response. This is the response. The first three columns are identical to what SCVWA filed; except the spacing has been changed to comply with the rules.

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct and that this declaration was  
3 executed on August 18, 2021 at Corte Madera, California.  
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6 /s/Fred Blum

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